

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**

3 \* \* \*

4 United States of America,

Case No. 2:21-cr-00013-KJD-BNW

5 Plaintiff,

6 **REPORT AND RECOMMENDATION**

7 v.

8 George Orville Turner, Jr.,

9 Defendant.

10 **I. Introduction**

11 Before the Court is Defendant Turner's motion to suppress. ECF No. 42. The government  
12 opposed the motion (ECF No. 46), and Turner replied (ECF No. 47). The Court held an  
13 evidentiary hearing on October 19, 2021. ECF No. 51.

14 The basic facts of the case are as follows: A Las Vegas Metropolitan Police Department  
15 (LVMPD) officer, Officer Jex, observed certain concerning material on the Facebook account of  
16 "Kizzy Chapo." This material appeared to demonstrate that the owner of the Kizzy Chapo  
17 account was selling fake licenses and identification cards. Officer Jex also had reason to believe  
18 that the "Kizzy Chapo" account was associated with another account with the username "George  
19 Turner." Officer Jex applied for a search warrant for both the Kizzy Chapo and George Turner  
20 Facebook accounts. A state court judge authorized this warrant (the Facebook Warrant).

21 Officer Jex executed the Facebook Warrant and reviewed the seized material. Officer Jex  
22 discovered information which led him to believe that George Turner (1) operated both Facebook  
23 accounts; and (2) was engaged in forging licenses and identification cards, was a felon who may  
24 be in possession of a firearm, and was selling narcotics. Based on this information, Officer Jex  
25 obtained a second warrant to search Turner's home (the Residential Warrant). The Residential  
26 Warrant authorized Officer Jex to seize several categories of items, including forgery-related  
27 evidence, narcotics, firearms, and ammunition.

28

1 Police executed the Residential Warrant and seized several pieces of evidence including a  
2 firearm and ammunition. Turner was then charged with being a felon in possession of a firearm  
3 and a felon in possession of ammunition.

4 Now, Turner seeks to suppress the firearm and ammunition. Regarding the Facebook  
5 Warrant, Turner argues that there was no probable cause to obtain this warrant, and the warrant  
6 was overbroad because it was not limited to seizing forgery-related evidence. Regarding the  
7 Residential Warrant, Turner argues that it was invalid because it was based on evidence obtained  
8 from the invalid Facebook Warrant, and the police lacked probable cause to search for the  
9 firearm. The government responds that the Facebook Warrant was supported by probable cause  
10 and was not overbroad but rather limited to identity and forgery-related evidence. The  
11 government further argues that the firearm-related evidence obtained from the Facebook Warrant  
12 could be seized based on the plain view doctrine. Accordingly, the government argues that there  
13 was probable cause to search Turner's home for firearms and ammunition. The government  
14 continues by arguing that even if there was no probable cause to search Turner's home for  
15 firearms, the good faith exception applies (such that police could rely on the Residential Warrant,  
16 which allowed them to search for firearms and ammunition). And, even if the good faith  
17 exception did not apply, officers would have inevitably discovered the firearm and ammunition in  
18 Turner's home while otherwise lawfully searching it. Accordingly, the government argues that  
19 the firearm and ammunition should not be suppressed.

20 Having reviewed the parties' briefs, the search warrants at issue, the parties' oral  
21 arguments, and the law, the Court recommends that Defendant's motion to suppress be granted.  
22 In support of this recommendation, the Court summarizes the evidence, provides the parties'  
23 arguments, and analyzes the facts under the applicable law.

24 **II. Background**

25 Officer Logan Thomas Jex testified that he is an officer with LVMPD. He created an  
26 undercover Facebook account in February of 2020. At some point, he became friends with  
27 someone who had an account named "Kizzy Chapo." Based on what he observed on Kizzy  
28

1 Chapo's account, he applied for a search warrant and filed an affidavit in support. Ex. 1  
 2 (Facebook Warrant).

3                   **A.       The Facebook Warrant**

4                   In the affidavit in support of the Facebook Warrant, Officer Jex provided the following  
 5 information: Kizzy Chapo's Facebook profile picture depicts a man wearing a mask. Ex. 1 at  
 6 002880. However, his account includes additional pictures of the same individual without a mask.  
 7 *Id.* at 002880-81. Officer Jex investigated this man's identity, including by comparing the  
 8 Facebook photos to prior booking photos, and discovered that the man was George Turner. *Id.* at  
 9 002881.

10                  The Kizzy Chapo account is believed to be related to another Facebook account under the  
 11 name "George Turner." *Id.* The George Turner account (1) has the same profile picture as the  
 12 Kizzy Chapo account (in which the person is wearing a mask); (2) has pictures of the same  
 13 individual without a mask; and (3) provides the name "Kiiz Chapo." *Id.*

14                  There have been multiple posts on the Kizzy Chapo account related to forgery. *Id.* at  
 15 002880. A post from July 6, 2020 displays photos of several states' driver's licenses and  
 16 identification cards. *Id.* at 002881. With this photo, the poster wrote:

17                  Need a drivers license!? Look no further. How do I do it? These drivers license pass  
 18 every single test possible in any state. From holograms to microprint, from UV to  
 19 scanning abilities. I prepare the IDs for every single test a bouncer or police officer  
 20 has out there. They easily pass the bend test, backlight test, & several others you  
 21 may have never ever heard of. How its delivered? IDs are generally crafted 4-6  
 22 days after your order has been placed, & will most likely be in your hands within  
 23 2-3 weeks of purchase. Passes the following: clubs, bars, casinos, rental cars,  
 airports, hotels, motels, airbnbs, police traffic stops, warrants/fines, avoid jail time.  
 Contact me for prices!! Prices vary depending on state you want. With regular  
 shipping 2-3 weeks, rushed shipping is \$40 estimated arrival: 12 days. Only  
 accepting cash app, paypal, venmo payments.

24                  Ex. 1 at 002881-82. Under this post were comments inquiring whether the post was real. *Id.* at  
 25 002882. Kizzy Chapo responded by posting a video of a Pennsylvania driver's license with  
 26 George Turner's picture but the name Tyreik Shaamad Muhammad. *Id.* The license has an ID  
 27  
 28

1 number that, upon completing a records check, belongs to a woman named Natasha Reeves. *Id.*  
2 Accordingly, the driver's license depicted in the video was a forgery. *Id.*

3 Additionally, under the same July 6, 2020 post, Kizzy Chapo included a list of prices for  
4 the forged identification cards. *Id.* The Kizzy Chapo page also includes a post indicating what  
5 states he makes false identification cards for. *Id.* Kizzy Chapo also posted information about the  
6 process for making and distributing the forged identification cards. *Id.*

7 Based on all this information, Officer Jex wrote that he believed George Turner was  
8 producing fraudulent identification cards. *Id.* at 002882. As such, Officer Jex wrote, "A search  
9 warrant is being requested on the Facebook account 'George Turner' and 'Kizzy Chapo' in order  
10 to recover evidence related to the crimes of forgery and conspiracy to commit forgery." *Id.*

11 Officer Jex sought to seize the following categories of information from both the Kizzy  
12 Chapo and George Turner accounts:

- 13 1. Basic user identity information – The date the profile was created; First and last  
14 names provided by the user; user ID; an email address provided by the user;  
15 City, State, country; Account creation date and time; IP address at the time of  
sign up.
- 16 2. IP address logs – Historical IP logs from June 01, 2020 to current date.
- 17 3. Private user communications – Private in-box messages, private sent messages,  
18 and private messages in the trash folder from June 01, 2020 to current date.
- 19 4. Stored user files – photographs, videos, blogs, and classifieds.
- 20 5. Public wall messages / postings from June 01, 2020 to current date.
- 21 6. Other general information / records – Users date of birth, Gender, Hometown,  
22 Occupation, as well as historical private message header information.
- 23 7. Phone numbers associated with the account and/or profile
- 24 8. Any and all 'Facebook Messenger' application messages to include but not  
25 limited to Private in-box messages, private sent messages, and private messages  
in the trash folder from June 01, 2020 to current date.

26 *Id.* at 002879-80.

27 On August 4, 2020, a state court judge approved the Facebook Warrant. Ex. 1 at 002888.  
28 Officer Jex executed the Facebook Warrant and seized the categories of information enumerated

1 in the warrant. ECF No. 42-3 at 13 (Facebook Warrant return); Ex. 2 at 002790 (Residential  
2 Warrant).

3 Critically, Officer Jex seized all the data identified above. Ex. 2 at 002790. As discussed  
4 below, this data included evidence related to other potential crimes (including illegally possessing  
5 guns and drugs), which was later included in the Residential Warrant application.

6 **B. The Residential Warrant**

7 Based on the information Officer Jex obtained from the Facebook Warrant, he applied for  
8 a search warrant for George Turner's home (the Residential Warrant) on November 7, 2020. Ex.  
9 2.

10 In the affidavit in support of the Residential Warrant, Officer Jex explained that he  
11 previously obtained a search warrant to seize certain information from Facebook for the profiles  
12 of Kizzy Chapo and George Turner. *Id.* at 002788-90. Officer Jex then detailed some of the  
13 information he obtained from the Facebook Warrant. As discussed below, execution of the  
14 Facebook Warrant revealed evidence of forgery-related crimes, firearm-related crimes, and drug-  
15 related crimes. *See* Ex. 2.

16 **i. Forgery-Related Evidence**

17 Reviewing Turner's private messages, Officer Jex discovered forgery-related evidence. On  
18 July 7, 2020, a woman named Bennett messaged Turner. *Id.* at 002790. Turner and Bennett  
19 communicated from July 7, 2020 to August 2, 2020 about Bennett obtaining Arizona and  
20 California identification cards. *Id.* at 002790-92. Bennett stated that she wanted a vertical, Arizona  
21 ID and Turner responded, "Why would you risk them finding out you have a fake ID just because  
22 you want it vertical?" *Id.* at 002790. Turner further stated that he was trying to prevent Bennett  
23 from going to jail, and "[t]his is an illegal service & you gotta be smart when using these ID[s]." *Id.*  
24 at 002791. On July 29, Bennett sent Turner payment for an ID and (at some point) information  
25 she wanted on the ID. *Id.* at 002791-92. Turner then explained that the ID would arrive in a package  
26 from China. *Id.* at 002792.

27 On July 26, 2020, a person under the Facebook profile name Keyarea Moore messaged  
28 Turner about the IDs and whether they were a scam. *Id.* at 002792. Turner responded by stating

1 that it was not a scam and that it was “an illegal service.” *Id.* at 002793. Turner went on to explain  
 2 how the process works (and specifically, that if you use a person’s name that has not been  
 3 “processed” by police, police will not find you in their system). *Id.*

4 On July 27, 2020, a person under the Facebook profile Jada contacted Turner and asked if  
 5 the licenses were legal. *Id.* Turner responded, “It’s a fake drivers license.” *Id.*

6 On October 6, 2020, Turner posted a Facebook story on his “George Turner” account. *Id.*  
 7 at 002796. The story included several statements, including “Who needs help getting a drivers  
 8 license? These drivers license pass every single test possible in any state.” *Id.* The post goes on to  
 9 detail which tests the licenses pass (e.g., holograms, microprint, etc.) at which places (e.g., clubs,  
 10 bars, casinos, etc.). *Id.* Turner also re-posted photos about ordering IDs. *Id.*

11 On October 15, 2020, Turner posted an advertisement depicting several IDs. *Id.* Officer  
 12 Jex performed a record check on three California IDs, which showed that the driver license  
 13 identification numbers did not match the subject depicted (i.e., the licenses were fake). *Id.* at  
 14 002796-97.

15 Based on this evidence, Officer Jex wrote that he believed Turner committed the crime of  
 16 conspiracy to commit forgery in violation of NRS 205.090. *Id.* at 002793. Officer Jex also wrote  
 17 that he believed Turner committed the crime of possessing a document or personal identity  
 18 information to commit forgery/counterfeiting in violation of NRS 205.465. *Id.* at 002794.

19 **ii. Firearm-Related Evidence**

20 On February 19, 2020, Turner posted a picture on Facebook of two handguns inside what  
 21 appeared to be a firearm store. *Id.* at 002798. Turner wrote “Bae wyu [where you at] Im [sic] tired  
 22 of buying guns off the street.” *Id.*

23 On May 14, 2020, Turner was arrested for being a prohibited person in possession of a  
 24 firearm. *Id.* at 002797.

25 On July 25, 2020, Turner privately messaged on Facebook with an individual named  
 26 Lepatrick Featherson about firearms. *Id.* at 002798. Turner wrote, “I need one to keep in the  
 27 crib . . .” *Id.* at 002798-99. Featherson responded, “gotta get camera’s [sic] and you gotta get a  
 28

1 piece on GP." *Id.* at 002799. Turner responded, "Yes bro I'm working on it now[.] I wanna get a  
 2 Glock and get these cameras installed this week." *Id.*

3 Based on the above, (on November 7, 2020) Office Jex stated that he had "reason to believe  
 4 that Turner may be in possession of another firearm." *Id.*

5 **iii. Drug-Related Evidence**

6 On October 16, 2020, Turner posted two videos on one of his Facebook accounts. *Id.* at  
 7 002800. These videos appeared to advertise marijuana for sale. *Id.* Turner also posted a photo that  
 8 depicted over 50 pills of what appeared to MDMA or "Molly" with the slang "Tapin," which  
 9 indicates that others should contact him. *Id.* at 002800-01. Based on this, Officer Jex wrote that he  
 10 has reason to believe that Turner possessed narcotics with the intent to sell. *Id.* at 002801.

11 **iv. Items to be Seized**

12 Based on the above information provided in the Residential Warrant application, Officer  
 13 Jex sought to seize several categories of information from Turner's home, including evidence  
 14 related to drugs, firearms, and forgery-related crimes. *Id.* at 002783-86.

15 A state court judge signed the Residential Warrant on November 7, 2020. *Id.* at 002782.

16 **v. Execution of the Residential Warrant, Arrest, and Indictment**

17 The Residential Warrant was subsequently executed. Among other items, a firearm and a  
 18 box of ammunition were found.<sup>1</sup>

19 Turner was indicted on two counts: being a felon in possession of a firearm in violation of  
 20 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and being a felon in possession of ammunition in violation  
 21 of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). ECF No. 1 (indictment).

22 Turner now moves to suppress the firearm, the ammunition, and statements he made to  
 23 police. ECF No. 42 at 18.

24  
 25  
 26  
 27 <sup>1</sup> The arrest report was attached as an exhibit to Turner's motion and indicates that the firearm was found in the  
 28 broiler drawer of the oven and the ammunition was in a cabinet above the sink. *Id.* ECF No. 42-4 at 5. However, this  
 arrest report was *not* admitted into evidence, and no evidence was offered on where the gun and ammunition were  
 located.

1       **III. The Parties' Arguments**

2           **A. Turner's Opening Brief**

3           Turner argues that LVMPD violated his Fourth Amendment rights by executing two  
4 invalid search warrants, the Facebook Warrant and the Residential Warrant. ECF No. 42 at 7.

5           **i. The Facebook Warrant**

6           Regarding the Facebook warrant, Turner argues it was invalid for two reasons. *Id.*

7           First, Turner argues that the warrant failed to establish probable cause that evidence of a  
8 forgery-related crime would be found in either the Kizzy Chapo or George Turner Facebook  
9 accounts. *Id.* This so because, for the Kizzy Chapo account, Officer Jex relied on a post and  
10 accompanying video advertising the sale of IDs without verifying whether the post was authentic.  
11 *Id.* at 9, 10. For the George Turner account, Officer Jex believed it would contain forgery-related  
12 evidence merely because it had the same profile picture as the Kizzy Chapo account and a similar  
13 name (“Kiiz Chapo”). *Id.* at 10-11. Further, Officer Jex could have done more to corroborate the  
14 alleged forgery but failed to do so. *Id.*

15           Second, Turner argues that the Facebook Warrant was overbroad because it failed to limit  
16 what could be seized to just forgery-related evidence. *Id.* at 7. Instead, the warrant allowed  
17 LVMPD to search and seize all data and information, even if it was wholly unrelated to forgery.  
18 *Id.* at 12-13. Additionally, because the warrant allowed LVMPD to search George Turner's  
19 account (with no evidence it was involved in the forgery scheme), it was akin to a “general  
20 warrant that allowed unfettered rummaging through Mr. Turner's personal data.” *Id.* at 13-14.

21           **ii. The Residential Warrant**

22           Regarding the Residential Warrant, Turner also makes two arguments regarding why it  
23 was invalid. *Id.* at 7. First, Turner argues that because the evidence seized from Facebook was  
24 illegally obtained, this evidence could not be used by LVMPD to obtain the Residential Warrant.  
25 *Id.* at 7. Second, Turner argues that the Residential Warrant lacked probable cause to believe  
26 firearm-related evidence would be in his home. *Id.*

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### iii. The Good Faith Exception

Turner also argues that the good faith exception does not apply. *Id.* at 16-17. Specifically, he argues that an officer's good faith reliance on a warrant that is subsequently invalidated does not save it when, as is applicable here, (1) the supporting affidavit is so lacking in probable cause that the officer's belief in it is unreasonable; and (2) the warrant is so facially deficient in failing to specify the place to be searched or the things to be seized that an officer cannot reasonably presume the warrant to be valid. *Id.* at 17. Turner argues that both warrants lacked probable cause, and the Facebook Warrant failed to specify the items to be seized such that LVMPD could not reasonably presume the warrant was valid. *Id.*

Based on these arguments, Turner argues that all evidence seized under both warrants (including the firearm, ammunition, and Turner’s statements to police) must be suppressed. *Id.* at 7.

## **B. The Government's Response**

The government opposes Turner's motion. ECF No. 46.

### i. The Facebook Warrant

First, the government argues that there was probable cause to obtain the Facebook warrant, especially under the deferential standard that this Court must apply when reviewing warrants issued by other judges. *Id.* at 9. The government summarizes the evidence upon which Officer Jex relied to obtain the Facebook warrant and argues that he was not required to further investigate, as the Kizzy Chapo account was openly advertising fake IDs for sale. *Id.* at 9-10. Regarding the George Turner account, the government argues that Officer Jex believed the two accounts were related because they had the same profile picture, the name on the George Turner account was “Kiiz Chapo,” and the Kizzy Chapo account posted a video that included a photograph of Turner. *Id.* at 11. The government concludes that the search of George Turner’s account was “necessary and entirely appropriate in an effort to identify the account holder of the related ‘Kizzy Chapo’ account.” *Id.* The government also argues in the alternative that if there was no probable cause to search the George Turner Facebook account, the Court can excise that

1 portion of the search warrant (as the return from the Kizzy Chapo Facebook account provided  
 2 probable cause to obtain the Residential Warrant). *Id.* at 11, n.12.

3 Second, the government argues that the Facebook Warrant was sufficiently particular. *Id.*  
 4 at 12. The government argues that the warrant was limited to information for which Officer Jex  
 5 had probable cause: information related to (1) the identity of the account holder and (2) forgery.  
 6 *Id.* at 17. The government argues it would have been impossible for Officer Jex to narrow his  
 7 request for messages to only those about fake IDs. *Id.* at 14-15. The government also asserts that  
 8 the Ninth Circuit has rejected arguments that searches need to be narrowed by search terms and  
 9 that Facebook does not search through content to determine if it is responsive to warrants. *Id.* at  
 10 16.

11 Third, the government argues that even if the Facebook Warrant lacked probable cause, it  
 12 was not so lacking such that it rendered the officer's belief in it unreasonable. *Id.* at 18-20. Thus,  
 13 the good faith exception applies. The government also argues that the warrant was not so facially  
 14 deficient (in failing to particularize the place to be searched and the things to be seized) that  
 15 officers could not reasonably presume the warrants to be valid. *Id.* at 19-20. The government did  
 16 not elaborate much on this point, except to say that the warrant here was narrower than the one at  
 17 issue in *United States v. Blake*, 868 F.3d 960, 974-75 (11th Cir. 2017), because it was temporally  
 18 limited in this case. *Id.* at 20.

19 **ii. The Residential Warrant**

20 The government argues that based on the Facebook Warrant return, there was probable  
 21 cause to obtain a search warrant for Turner's home related to crimes of forgery and being a felon  
 22 in possession of a firearm. *See id.* at 20. The government notes that even though the messages  
 23 related to firearms that Officer Jex discovered were unrelated to the forgery crimes he was  
 24 investigating, they could be seized under the plain view doctrine. *Id.* at 21, n. 17.

25 The government also argues that even if there was no probable cause to search Turner's  
 26 home for firearm-related evidence, the good faith exception applies. *Id.* at 21. The government  
 27 argues that the search warrant was not so lacking in probable cause to make officers' reliance on  
 28 it unreasonable. *Id.* at 21-22.

1           The government also argues that the doctrine of inevitable discovery applies in this case.  
 2           *Id.* at 22-23. The government essentially argues that the warrant was supported by probable cause  
 3 to search Turner's home for forgery-related evidence, even if there was no probable cause to  
 4 search for firearms. *Id.* The government concludes that even if the warrant did not authorize  
 5 officers to search for firearms, "law enforcement officers would have inevitably discovered the  
 6 firearm in their search because a firearm is much larger than an identification card." *Id.* at 23.  
 7 Accordingly, the government concludes that Turner's motion to suppress should be denied.

8           **C.     Turner's Reply**

9           In reply, Turner reiterates some of the same arguments he made in his motion. ECF No.  
 10 47. Turner argues that LVMPD did not have probable cause to obtain the Residential Warrant. *Id.*  
 11 at 6-8. Turner argues that Officer Jex had no information that drug-related evidence would be in  
 12 Turner's home. *Id.* at 6. Turner further argues that Officer Jex had no information that forgery-  
 13 related evidence would be in Turner's home, as none of the evidence gathered from Facebook  
 14 demonstrated that people could come to Turner's house to obtain a fake ID. *Id.* Finally, Turner  
 15 argues that none of the Facebook evidence suggested that Turner would possess a firearm at his  
 16 home at the time the search warrant was executed in November 2020. *Id.* at 6-7.

17           Turner also argues that the doctrines of good faith and inevitable discovery do not apply.  
 18 *Id.* at 8. First, Turner reiterates the same argument he made in his motion regarding the good faith  
 19 exception. *Id.* Second, Turner argues that it is the government's burden to prove that the firearm  
 20 would have been inevitably discovered, and the government cannot carry this burden. *Id.* This is  
 21 so, according to Turner, because assuming the government was only searching for forgery-related  
 22 evidence, they would not have searched the place where the firearm and ammunition were  
 23 found—in a kitchen cabinet and inside the oven's broiler drawer. *Id.* at 9. Accordingly, Turner  
 24 argues that the firearm, ammunition, and statements Turner made to police must be suppressed.  
 25 *Id.* at 10.

26           **IV.    Analysis**

27           The Fourth Amendment provides,

28

1           The right of the people to be secure in their persons, houses, papers, and effects,  
 2           against unreasonable searches and seizures, shall not be violated, and no warrants  
 3           shall issue, but upon probable cause, supported by oath or affirmation, and  
 4           particularly describing the place to be searched, and the persons or things to be  
 5           seized.

6           U.S. CONST. AMEND. IV. In other words, and as explained in more detail below, a warrant must  
 7           (1) be supported by probable cause and (2) specifically describe both the place to be searched and  
 8           what is to be seized.

9           **A.     Whether Probable Cause Existed to Obtain the Facebook Warrant**

10           “Probable cause exists when, under the totality of the circumstances, ‘there is a fair  
 11           probability that contraband or evidence of a crime will be found in a particular place.’” *United*  
*12           States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006); *see United States v. SDI Future Health, Inc.*,  
*13           568 F.3d 684, 703 (9th Cir. 2009)* (providing same rule).

14           The defendant bears the burden of showing that a regularly-issued search warrant was not  
 15           supported by probable cause. *Chin Kay v. United States*, 311 F.2d 317, 321 (9th Cir. 1962).  
 16           Further, an issuing-judge’s probable cause determination is entitled to deference, and a reviewing  
 17           court may “not find a search warrant invalid so long as the issuing judge had a substantial basis  
 18           for concluding that the supporting affidavit established probable cause.” *United States v. Flores*,  
*19           802 F.3d 1028, 1043 (9th Cir. 2015); see also United States v. Schesso*, 730 F.3d 1040, 1045 (9th  
*20           Cir. 2013)* (articulating same standard); *United States v. Crews*, 502 F.3d 1130, 1135 (9th Cir.  
*21           2007)* (same).

22           Here, the Court finds that the issuing-judge had a substantial basis for concluding that  
 23           Officer Jex’s affidavit provided probable cause to search the Kizzy Chapo account but not the  
 24           George Turner account. However, the George Turner portion of the search warrant (and the  
 25           evidence retrieved from the George Turner account) can be severed from the Facebook Warrant.

26           **i.       The Kizzy Chapo Account**

27           The Facebook Warrant contained posts from this account indicating that the account-  
 28           operator was selling fake IDs, including by specifying that the IDs could help people avoid  
 29           warrants, fines, and jail time. *See* Ex. 1 at 002881-82. Given these posts, the issuing-judge had a

1 substantial basis for concluding that a fair probability existed that evidence of a forgery-crime  
2 would be found in Kizzy Chapo's Facebook account.

3 Turner does not appear to disagree that the Kizzy Chapo posts suggested the account user  
4 was engaged in forgery-related crimes. *See* ECF No. 42. Rather, the essence of Turner's argument  
5 is that Officer Jex should have done more to investigate before seeking a warrant. *See id.* at 9-11.  
6 However, Turner does not cite any authority for the proposition that a longer or more in-depth  
7 investigation was required to satisfy the Fourth Amendment. *See id.* And the standard for  
8 probable cause simply asks whether "under the totality of the circumstances, 'there is a fair  
9 probability that contraband or evidence of a crime will be found in a particular place.'" *Luong*,  
10 470 F.3d at 902. Here, based on the facts contained in the Facebook Warrant, the issuing-judge  
11 had a substantial basis for concluding that a fair probability existed that evidence of a forgery-  
12 crime would be found in Kizzy Chapo's Facebook account.

13 **ii. The George Turner Account**

14 Regarding the George Turner Facebook account, the Court finds that the issuing-judge did  
15 not have a substantial basis for concluding that the supporting affidavit established probable cause  
16 to believe "contraband or evidence of a crime" would be found in this account. *See Flores*, 802  
17 F.3d at 1043 (providing standard under which court must review an issuing-judge's probable  
18 cause determination); *Luong*, 470 F.3d at 902 (defining probable cause). The government  
19 acknowledges that "there were no posts related to forgery by the 'George Turner' account noted  
20 in the affidavit . . ." ECF No. 46 at 11. The government's only argument regarding why it was  
21 acceptable to search George Turner's account is that it was "necessary and entirely appropriate"  
22 to identify the account holder of the Kizzy Chapo account, since the two accounts appeared to be  
23 related. *Id.* As explained below, the Court is unconvinced by the government's argument,  
24 especially as it was not developed with citation to authority.

25 First, the question is not whether a search is "necessary" or "appropriate" but rather  
26 whether there is a fair probability that "contraband or evidence of a crime" will be found in a  
27 particular place. *See Luong*, 470 F.3d at 902. And, critically, the government concedes that  
28

1 Officer Jex's affidavit had no information about George Turner's account containing contraband  
 2 or evidence of a forgery-related crime. ECF No. 46 at 11.

3 Second, the government has not explained if or how someone's identity can be  
 4 "contraband or evidence of a crime." *See id.* Indeed, the government cites no authority for its  
 5 argument that it could search George Turner's account to discover the identity of the Kizzy  
 6 Chapo account holder.<sup>2</sup> *See id.* While the Court is aware that the Ninth Circuit has upheld  
 7 provisions of search warrants allowing the government to seize documents that show who  
 8 controls, possesses, or owns the property that is the subject of a search warrant, it is unclear if the  
 9 government may obtain a warrant solely to obtain someone's identity, independent of having  
 10 probable cause to search for contraband or evidence of a crime. Accordingly, without more from  
 11 the government, the Court cannot accept its argument that it could search George Turner's  
 12 Facebook account (including private messages, photos, videos, blogs, classifieds, etc.) solely to  
 13 determine the identity of the Kizzy Chapo account holder, which, in any event, the government  
 14 appears to have already had.

15 **iii. Severance**

16 The government notes that if the Court determines that there was no probable cause to  
 17 search George Turner's Facebook account, it may sever it from the rest of the warrant (and the  
 18 evidence obtained from George Turner's account in the Residential Warrant). ECF No. 46 at 11,  
 19 n.12. Turner did not respond to this argument in writing and only briefly noted at oral argument  
 20 that it did not know if the Court could sever warrants (when they are overbroad). *See* ECF No. 47;  
 21 ECF No. 54 at 56 (transcript of oral argument).

22 Severance is appropriate here. The Ninth Circuit has "embraced the doctrine of severance,  
 23 which allows us to strike from a warrant those portions that are invalid and preserve those  
 24 portions that satisfy the Fourth Amendment. Only those articles seized pursuant to the invalid  
 25 portions need be suppressed." *Flores*, 802 F.3d at 1045; *see also United States v. Spilotro*, 967  
 26 (9th Cir. 1986) ("In this circuit we follow the rule that where invalid portions of a warrant may be

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27 <sup>2</sup> The Court also notes that in the Facebook Warrant, Office Jex had already identified the person depicted in the  
 28 Kizzy Chapo profile picture as George Turner (and had his date of birth and social security number). Ex. 1 at  
 002880-81.

1 stricken and the remaining portions held valid, seizures pursuant to the valid portions will be  
 2 sustained.”). Severance requires that the invalid portions be identifiable and capable of severance  
 3 from the valid portions. *See Spilotro*, 800 F.2d at 967. Here, the portion of the Facebook Warrant  
 4 authorizing officers to search and seize the George Turner account information is identifiable and  
 5 capable of severance from the Kizzy Chapo portion of the warrant. Accordingly, here, the Court  
 6 will sever the information obtained from the George Turner Facebook account from the  
 7 Residential Warrant for purposes of the rest of its analysis.

8 **B. Whether the Facebook Warrant was Overbroad**

9 **i. The Fourth Amendment’s Specificity Requirement**

10 The Fourth Amendment requires that a warrant specifically describe both the place to be  
 11 searched and the person or things to be seized. *Id.* at 963. The Ninth Circuit describes this  
 12 requirement as one of “specificity” and has “distinguished its ‘two aspects’: ‘particularity and  
 13 breadth . . . Particularity is the requirement that the warrant must clearly state what is sought.  
 14 Breadth deals with the requirement that the scope of the warrant be limited by the probable cause  
 15 on which the warrant is based.” *SDI*, 568 F.3d at 702.

16 Here, Turner argues that the Facebook Warrant was overbroad because it failed to limit  
 17 what could be seized to evidence of the suspected crimes and allowed officers to engage in an  
 18 unfettered rummaging through Turner’s personal data. ECF No. 42 at 7, 11-14.

19 The Court considers three factors in analyzing whether a warrant is overbroad: “(1)  
 20 whether probable cause existed to seize all items of a category described in the warrant; (2)  
 21 whether the warrant set forth objective standards by which executing officers could differentiate  
 22 items subject to seizure from those which were not; and (3) whether the government could have  
 23 described the items more particularly in light of the information available . . . .” *Flores*, 802 F.3d  
 24 at 1044.

25 **ii. What Documents Constitute “the Warrant”**

26 Before the Court can analyze the breadth of a warrant, however, the Court must first  
 27 determine what documents make up “the warrant.” More specifically, the Court must address  
 28 whether other documents, such as an affidavit, are a part of “the warrant.” *See SDI*, 568 F.3d at

1 699 (before addressing whether the warrant is overbroad, “we must answer the threshold question  
 2 of whether the warrant incorporated [the agent’s] affidavit.”); *United States v. Towne*, 997 F.2d  
 3 537, 544 (9th Cir. 1993) (“Only after the content of ‘the search warrant’ is established . . . can the  
 4 warrant be tested to see if it meets [the Fourth Amendment’s] requirements.”).

5 In *Towne*, the Ninth Circuit confronted the question, “what is a search warrant?” 997 F.2d  
 6 at 539. More specifically, the Court discussed when documents submitted with a search warrant  
 7 (e.g., an affidavit or exhibit) may be considered as part of the actual warrant for purposes of  
 8 construing the warrant. *See Towne*, 997 F.2d 537. The court held that for another document to be  
 9 considered part of the search warrant, it must be (1) incorporated by reference to the search  
 10 warrant and (2) accompany the search warrant both when it is authorized by the judge and when  
 11 the search warrant is executed. *See id.* at 547-48; *see also SDI*, 568 F.3d at 699 (“We consider an  
 12 affidavit to be part of a warrant, and therefore potentially curative of any defects, ‘only if (1) the  
 13 warrant expressly incorporated the affidavit by reference and (2) the affidavit either is attached  
 14 physically to the warrant or at least accompanies the warrant while agents execute the search.’”).  
 15 The Ninth Circuit noted that it remains “‘rigid’ in [its] insistence on both these requirements” to  
 16 “assure that the affidavit actually limits the ‘discretion of the officers executing the warrant.’”  
 17 *Towne*, 997 F.2d at 548.

18 Here, the warrant expressly incorporated the affidavit by reference (Ex. 1 at 002886), but  
 19 there was no evidence that the affidavit accompanied the warrant while the search was executed.<sup>3</sup>  
 20 Accordingly, it was not established that the affidavit was part of the Facebook Warrant (and thus  
 21 could be used to narrow it) under controlling Ninth Circuit law.

22 That said, neither party explicitly addressed this issue. The government appears to assume  
 23 that Officer Jex’s affidavit is part of the Facebook Warrant, and Turner’s position is unclear.  
 24 Because it does not change the Court’s conclusion, the Court treats Officer Jex’s affidavit as

25  
 26  
 27 <sup>3</sup> Additionally, it is not clear to the Court if Officer Jex was the only officer who reviewed the data seized from  
 28 Facebook or if other officers searched the data, too. Officer Jex noted in the Residential Warrant application that he  
 believed the Facebook Warrant would “allow officers to retrieve evidence of the conspiracy.” Ex. 2 at 002788  
 (emphasis added).

1 being incorporated into the Facebook Warrant for purposes of its analysis and concludes that  
 2 certain categories in the Facebook Warrant are overbroad.

3                   **iii.         How an Affidavit Affects the Breadth of a Warrant**

4                 When an affidavit is incorporated into a warrant, courts may consider the affidavit and the  
 5 warrant as a whole, and the affidavit may cure deficiencies in a “naked” warrant. *SDI*, 568 F.3d at  
 6 699. The Ninth Circuit, however, does not appear to have provided any clear test for determining  
 7 if and how an affidavit cures an otherwise deficient warrant. Still, there are instructive Ninth  
 8 Circuit cases on how an affidavit may or may not cure a deficient warrant.

9                 The Ninth Circuit’s first “detailed examination of the cure-by-affidavit rule came in *In re*  
 10 *Property Belonging to Talk of the Town Bookstore, Inc.*, 644 F.2d 1317 (9th Cir. 1981),” and it  
 11 provides an easy example of how the rule can work. *Towne*, 997 F.2d at 545. In that case, the  
 12 *warrants* authorized officers to seize certain property “described in the Affidavits.” 644 F.2d at  
 13 1319. The *affidavits*, in turn, described the property to be seized in detail. *Id.* Accordingly, the  
 14 Ninth Circuit held that the “warrants expressly limited the property subject to seizure to that  
 15 described in detail in the incorporated affidavits,” and as such, “any generality in the warrants  
 16 was cured by the incorporation and attachment of the affidavits.” *Id.*

17                 Since *In re Property Belonging to Talk of the Town Bookstore*, the Ninth Circuit has  
 18 provided other guideposts for if and how an affidavit can cure a deficient warrant. As is relevant  
 19 to this case, the Ninth Circuit has held that mentioning the statute alleged to have been violated in  
 20 the affidavit or even ““limiting” the search to only records that are evidence of the violation of a  
 21 certain statute is generally not enough” if a more specific description of the items sought is  
 22 possible. *United States v. Cardwell*, 680 F.2d 75, 77-78 (9th Cir. 1982) (holding that a search  
 23 warrant that authorized the seizure of business documents that were evidence of a violation of 26  
 24 U.S.C. § 7201 was overbroad, given that the government had more information about the  
 25 suspected crimes); *see also Spilotro*, 800 F.2d at 965 (“In *Cardwell* we noted that warrants  
 26 reciting generic classifications and criminal statutes without more usually do not give the officers  
 27 who execute them guidance to determine what items to seize.”).

28

1           The Ninth Circuit has also noted several times that the government can narrow a warrant  
 2 by “describing the criminal activities themselves rather than simply referring to the statute  
 3 believed to have been violated.” *Spilotro*, 800 F.2d at 964; *see also United States v. Kow*, 58 F.3d  
 4 423, 427 (9th Cir. 1995) (“The government could have made the warrant more particular. Most  
 5 obviously, the warrant could have specified the suspected criminal conduct.”).

6           That said, describing the suspected criminal activity does not, by itself, prevent a warrant  
 7 (including an affidavit) from being overbroad. *See SDI*, 568 F.3d 684. In *SDI*, the Ninth Circuit  
 8 analyzed whether the warrant incorporated the affidavit and concluded that it did. *Id.* at 699-701  
 9 (“[T]he warrant did incorporate the affidavit.”). The search warrant affidavit detailed the  
 10 suspected criminal conduct (healthcare-related fraud and tax fraud) and provided twenty-four  
 11 categories of items to be seized. *Id.* at 691-92. Still, as discussed below, the Ninth Circuit found  
 12 that some categories were overbroad. *Id.* at 702-05.

13           On the one hand, the Court found certain categories of information were not overbroad.  
 14 The affidavit explained how the government believed SDI conspired with doctors and other  
 15 medical companies to defraud Medicare, insurers, and others, and how SDI committed tax fraud.  
 16 *Id.* at 691-92. SDI’s entire business consisted of conducting sleep studies, and SDI’s alleged  
 17 fraudulent conduct was routine. *Id.* at 703. Based on those facts, the Ninth Circuit found that, for  
 18 example, the category “[d]ocuments related to billing records and records of payments received”  
 19 was not overbroad. *Id.* at 703-04. The Ninth Circuit reasoned that because the affidavit alleged  
 20 that SDI engaged in both tax fraud and Medicare fraud, there was probable cause to seize all these  
 21 billing documents. *Id.* at 704. The Ninth Circuit also reasoned that the category “[d]ocuments  
 22 relating to correspondence with Medicare intermediaries and private insurance companies” was  
 23 not overbroad even though the government did not limit it to those documents related to sleep  
 24 studies, because the affidavit made clear that SDI’s entire business was conducting sleep studies.  
 25 *See id.*

26           On the other hand, the Ninth Circuit found that certain categories of information were  
 27 overbroad, despite the affidavit’s incorporation. For example, the court held that the category,  
 28 “[d]ocuments relating to non-privileged internal memoranda and Email” was overbroad. *Id.* at

1 704-05. The court reasoned that these documents typically contain a wide range of subject matters  
2 not necessarily related to sleep studies (let alone the alleged criminal conduct). *See id.* The court  
3 noted that this category “constitutes an invitation to a general, ‘exploratory rummaging in a  
4 person’s belongings.’” *Id.* Similarly, the court held that the categories, “[d]ocuments relating to  
5 bank accounts, brokerage accounts, trusts,” “[c]hecking, savings, and money market account  
6 records, including check registers, cancelled checks, monthly statements, wire transfers, and  
7 cashier’s checks,” and “[d]ocuments relating to personnel and payroll records” were overbroad.  
8 *Id.* The court noted that companies keep many financial documents and information of  
9 employees’ and thus, without making these categories more specific, “the warrant provided the  
10 search team with discretion to seize records wholly unrelated” to SDI’s finances or the alleged  
11 crimes. *See id.* at 705. Finally, the court found the category “[r]olodexes, address books and  
12 calendars” to be “the laziest of gestures in the direction of specificity . . . this category practically  
13 begs the search team to find and to seize the contact information of every person who ever dealt  
14 with SDI.” *Id.* at 705. The court further provided that this category could have and should have  
15 been limited to the information of people likely related to the conspiracy (e.g., consultants,  
16 doctors, etc. even if not named individually). *Id.* At bottom, the court’s reasoning in *SDI* makes  
17 clear that even if an incorporated affidavit describes the suspected criminal conduct, the warrant  
18 may still be overbroad depending on the breadth of the categories of items to be seized.

19 **iv. The Breadth of the Facebook Warrant**

20 Here, the Court finds that certain categories in the Facebook Warrant were overbroad. As  
21 discussed below, the Court applies the three-part test for analyzing overbreadth and considers  
22 Officer Jex’s affidavit as part of the warrant for purposes of its analysis. *See Flores*, 802 F.3d at  
23 1044 (courts must consider three factors in analyzing whether a warrant is overbroad: “(1)  
24 whether probable cause existed to seize all items of a category described in the warrant; (2)  
25 whether the warrant set forth objective standards by which executing officers could differentiate  
26 items subject to seizure from those which were not; and (3) whether the government could have  
27 described the items more particularly in light of the information available . . .”).

28

First, probable cause did not exist to seize all items of each category described in the warrant.

As previously noted, the warrant authorized Officer Jex to seize the following categories of information from the Kizzy Chapo account:<sup>4</sup>

1. Basic user identity information – The date the profile was created; First and last names provided by the user; user ID; an email address provided by the user; City, State, country; Account creation date and time; IP address at the time of sign up.
2. IP address logs – Historical IP logs from June 01, 2020 to current date.
3. Private user communications – Private in-box messages, private sent messages, and private messages in the trash folder from June 01, 2020 to current date.
4. Stored user files – photographs, videos, blogs, and classifieds
5. Public wall messages / postings from June 01, 2020 to current date.
6. Other general information / records – Users date of birth, Gender, Hometown, Occupation, as well as historical private message header information.
7. Phone numbers associated with the account and/or profile
8. Any and all ‘Facebook Messenger’ application messages to include but not limited to Private in-box messages, private sent messages, and private messages in the trash folder from June 01, 2020 to current date.

Ex. 1 at 002886-87.

The Court finds that there was probable cause to seek the identity-related categories of information (categories 1, 2, 6 [minus historical private message header information], and 7). The Ninth Circuit has long held that officers may properly seek information to identify the person who controls the place to be searched. *Ewing v. City of Stockton*, 588 F.3d 1218, 1229 (9th Cir. 2009) (“[T]his court has long upheld warrants containing such language.”).

There was not, however, probable cause to seek all items in the remaining categories (3, 4, 5, 6 [as it relates to historical private message header information only], and 8). *See Flores*, 802 F.3d at 1044 (the first factor to consider in analyzing overbreadth is whether probable cause

<sup>4</sup> The Court will not analyze whether the Facebook Warrant was overbroad as it relates to searching George Turner's Facebook account, as the Court already found that there was not probable cause to search George Turner's account and severed that portion of the warrant.

1 existed to seize all items of a category described in the warrant). These categories request private  
2 inbox messages, private sent messages, private messages in the trash folder, photographs, videos,  
3 blogs, classifieds, public wall messages/postings, private message header information, and all  
4 Facebook Messenger application messages from June 1, 2020 to August 4, 2020. Ex. 1 at 002886-  
5 87. No other limitations were place on what could be seized in these categories. *See id.* There was  
6 no probable cause to seize all this information, much of which may have contained innocent  
7 information related to Turner and third parties. *See Kow*, 58 F.3d at 427 (“The government  
8 emphasizes that the warrant outlined fourteen separate categories of business records. However,  
9 the warrant contained no limitations on which documents within each category could be  
10 seized . . . By failing to describe with any particularity the items to be seized, the warrant is  
11 indistinguishable from the general warrants repeatedly held by this court to be unconstitutional.”);  
12 *SDI*, 568 F.3d at 704-05 (finding several categories of documents [e.g., memos and emails] to be  
13 overbroad because such documents typically contain a wide range of subject matters not  
14 necessarily related to the suspected criminal activity).

15 Second, for these problematic categories, the warrant did not set forth objective standards  
16 by which executing officers could differentiate items subject to seizure from those which were  
17 not. *See Ex. 1; Flores*, 802 F.3d at 1044 (the second factor courts must consider in analyzing  
18 whether a warrant is overbroad is whether the warrant set forth objective standards by which  
19 executing officers could differentiate items subject to seizure from those which were not).

20 Third, the government could have described the items in the Facebook Warrant more  
21 particularly in light of the information available. *See id.* (the third factor courts must consider in  
22 analyzing whether a warrant is overbroad is whether the government could have described the  
23 items more particularly given the available information). All the problematic categories could and  
24 should have been more limited based on what Officer Jex knew at the time he requested the  
25 Facebook Warrant. Specifically, Officer Jex had information that Turner appeared to be engaged  
26 in the advertisement and sale of fake licenses and identification cards. *See Ex. 1.* Accordingly, the  
27 categories listed above could have been limited, for example, by specifying that the documents or  
28 data sought (messages, blogs, videos, etc.) had to be related to licenses or identification cards.

1 Instead, Categories 3, 4, 5, 6 (related to private message header information), and 8, as written,  
 2 invite officers to seize all private user communications, all public wall messages and postings, all  
 3 private message header information, and all Facebook Messenger messages, regardless of  
 4 whether the information relates to the suspected crimes or is innocent and personal. Like the  
 5 categories of information the Ninth Circuit found to be overbroad in *SDI*, these categories  
 6 “constitute an invitation to a general, exploratory rummaging in a person’s belongings,” which is  
 7 exactly what occurred. *See SDI*, 568 F.3d 704-05 (cleaned up).

8 Accordingly, under the three-part test for overbreadth that this Court must apply,  
 9 Categories 3, 4, 5, 6 (related to private message header information only), and 8 are overbroad.  
 10 Even under the deferential standard this Court must apply to the issuing-judge’s decision, the  
 11 Court finds that these categories were so overbroad that the issuance of the warrant was clear  
 12 error; these categories are, on their face, completely untethered from any suspected criminal  
 13 activity. *See United States v. Bridges*, 344 F.3d 1010, 1014 (9th Cir. 2003) (issuance of a search  
 14 warrant reviewed for clear error).

15 This Court recognizes that the Ninth Circuit permits over-*collecting* of electronic data (to  
 16 determine where responsive information is stored) but critically, the Ninth Circuit does not allow  
 17 over-seizing/usage of information for which the government does not have probable cause. *See*  
 18 *Flores*, 802 F.3d at 1044-45 (over-collecting “is an accepted reality in electronic searching  
 19 because ‘[t]here is no way to be sure exactly what an electronic file contains without somehow  
 20 examining its contents.’”). However, the Ninth Circuit still applies the same overbreadth-analysis  
 21 to search warrants for electronic data. *See id.* (applying three-factor test). For example, in *Flores*,  
 22 the government obtained a search warrant to search the defendant’s Facebook page. *See id.* at  
 23 1044. The Ninth Circuit applied the three-factor test and suggested that the warrant was not  
 24 overbroad, even though it allowed the government to collect and search 11,000 pages of data  
 25 when only 100 pages were “truly responsive” to the warrant. *Id.* Critically, the court suggested  
 26 the warrant was not overbroad because it only allowed the government to keep and use evidence  
 27 “tending to show narcotics trafficking,” it provided objective standards for segregating this  
 28 responsive material from the rest of the defendant’s account, the government did not use the

1 seized data for any broader investigatory purpose, and Facebook, rather than the government,  
 2 segregated the defendant's account. *Id.* at 1044-45 & n.21.

3 Here, the Facebook Warrant was substantially broader than the warrant in *Flores* and did  
 4 not include any of the procedural safeguards the Ninth Circuit relied on to suggest that the *Flores*-  
 5 warrant was not overbroad. In other words, even if the government could over-collect (as  
 6 explained in *Flores*), the warrant would still be overbroad because (1) there was no probable  
 7 cause to "seize" or retain all the information received as part of the Facebook Warrant return; (2)  
 8 the warrant did not provide objective standards for segregating responsive material from  
 9 nonresponsive material; and (3) the government used the collected information for a broader  
 10 investigatory purpose (investigating narcotics-related and firearms-related offenses). Accordingly,  
 11 even considering that over-collecting "is an accepted reality in electronic searching," the  
 12 Facebook Warrant was still overbroad. *See Flores*, 802 F.3d at 1044-45. As the Ninth Circuit has  
 13 noted, "[t]he process of segregating electronic data that is seizable from that which is not must not  
 14 become a vehicle for the government to gain access to data which it has no probable cause to  
 15 collect." *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1177 (9th Cir.  
 16 2010).<sup>5</sup>

17 **C. Whether the Good Faith Exception Applies to the Facebook Warrant**

18 The government argues that even if the Facebook Warrant was deficient, the good faith  
 19 exception applies.

20 Evidence seized pursuant to a facially valid search warrant that later is held to be invalid  
 21 may still be admissible, if officers acted in good faith and in reasonable reliance on the warrant.  
 22 *Kow*, 58 F.3d at 428. The good faith exception will not apply, however, "(1) where the affiant  
 23 recklessly or knowingly placed false information in the affidavit that misled the issuing judge; (2)

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24 <sup>5</sup> Because the Court finds that the Facebook Warrant was overbroad with regard to the substantive categories  
 25 discussed above, the Court need not reach whether officers could have seized evidence related to firearms offenses  
 26 under the plain view doctrine, as the government argued. *See* ECF No. 46 at 21, n.17. The Supreme Court has limited  
 27 the application of the plain view doctrine to situations where the officer had a legal right to be at the location from  
 28 which the object was plainly viewed. *Horton v. California*, 496 U.S. 128, 136 (1990). Here, the only reason Officer  
 Jex was able to see information regarding firearms was because of the illegal overbreadth of the Facebook Warrant.  
 Additionally, the Court notes that even assuming *arguendo* that the Facebook Warrant was not overbroad, the Ninth  
 Circuit has cautioned "against retaining unresponsive data based on the 'plain view' doctrine" so that necessary over-  
 collecting of data does not violate the Fourth Amendment. *See Flores*, 802 F.3d at 1045.

1 where the judge ‘wholly abandon[s] his [or her] judicial role’; (3) where the affidavit is ‘so  
 2 lacking in indicia of probable cause as to render official belief in its existence entirely  
 3 unreasonable’; and (4) where the warrant is ‘so facially deficient—i.e., in failing to particularize  
 4 the place to be searched or the things to be seized—that the executing officers cannot reasonably  
 5 presume it to be valid.’” *United States v. Underwood*, 725 F.3d 1076, 1085 (9th Cir. 2013).

6       “The government bears the burden of proving that reliance upon the warrant was  
 7 objectively reasonable.” *Kow*, 58 F.3d at 428; *see also United States v. Camou*, 773 F.3d 932, 944  
 8 (9th Cir. 2014) (“The burden of demonstrating good faith rests with the government.”).

9       Turner argues that the good faith exception does not apply because the Facebook Warrant  
 10 was so facially deficient in failing to particularize the items to be seized that LVMPD could not  
 11 have reasonably presumed it to be valid (exception “4” above). ECF No. 42 at 17; ECF No. 47 at  
 12 8. The government responds by arguing that the Facebook Warrant in this case is narrower than a  
 13 broad Facebook warrant upheld under the good faith exception in *United States v. Blake*, 868  
 14 F.3d 960, 974-75 (11th Cir. 2017). ECF No. 46 at 20.

15       In the Ninth Circuit, “[a]s a rule,” if a warrant is facially defective because it is overbroad,  
 16 “an objectively reasonable belief in its validity will be impossible . . . .” *Towne*, 997 F.2d at 549.  
 17 This is so because “officers attempting to execute a warrant so facially overbroad that it precludes  
 18 reasonable reliance will recognize, even after the warrant leaves the hands of the magistrate, that  
 19 it fails to offer guidance.” *Id.* The Ninth Circuit has further explained that “[r]equiring that an  
 20 officer know when a warrant is facially overbroad to this degree presents little burden.” *Ortiz v.*  
 21 *Van Auken*, 887 F.2d 1366, 1370 (9th Cir. 1989). Accordingly, the Ninth Circuit is “vigilant in  
 22 scrutinizing officers’ good faith reliance on such illegally overbroad warrants.” *Id.*; *see also*  
 23 *United States v. Stubbs*, 873 F.2d 210 (9th Cir. 1989) (good faith exception inapplicable to  
 24 overbroad warrant that lacked probable cause to seize all documents allowed to be seized, did not  
 25 provide objective standards by which executing officers could determine what could be seized,  
 26 and should have been more specific).

27       Here, the government has not carried its burden to show that the good faith exception  
 28 applies to the Facebook Warrant. The government has not explained why or how this case should

1 be an exception to the Ninth Circuit’s rule that if a warrant is facially defective because it is  
 2 overbroad, “an objectively reasonable belief in its validity will be impossible.” *See Towne*, 997  
 3 F.2d at 549. Like in *Stubbs*, 873 F.2d 210, and as discussed above, the Facebook Warrant lacked  
 4 probable cause to seize all items in the enumerated categories, did not provide objective standards  
 5 by which officers could differentiate responsive items from nonresponsive items, and could and  
 6 should have been more specific about which items officers were allowed to “seize” and use.  
 7 Officers “attempting to execute” the Facebook Warrant should have recognized, even after the  
 8 issuing judge signed it, that it failed to offer guidance on what information they could “seize” and  
 9 use. *See Towne*, 997 F.2d at 549. Accordingly, the Facebook Warrant appears to squarely fit into  
 10 the category of warrants that are so facially overbroad that an objective, reasonable belief in their  
 11 validity is impossible. *See id.* Critically, the government has not explained why this is not so.

12 The government’s only argument is that the Facebook Warrant is narrower than a  
 13 Facebook warrant upheld under the good faith exception in *United States v. Blake*, 868 F.3d 960,  
 14 974-75 (11th Cir. 2017). ECF No. 46 at 20. There are two main problems with the government’s  
 15 reliance on *Blake*. First, *Blake* is an Eleventh Circuit case and is thus not controlling. Second, as  
 16 discussed below, *Blake* does not support the government’s position.

17 In *Blake*, a warrant required Facebook to *disclose* “virtually every type of data that could  
 18 be located in a Facebook account.” *Id.* at 966. In this way, it may have been “broader” than the  
 19 Facebook Warrant in this case. Critically, however, the warrant provided that the only data that  
 20 could be *seized* was data that “‘constitute[d] fruits, evidence and instrumentalities’ of a specified  
 21 crime.” *Id.* at 967. Accordingly, unlike this case, the warrant in *Blake* differentiated between what  
 22 Facebook was required to disclose and what the government could seize, and limited seizure to  
 23 evidence of a specified crime for which the government had probable cause. *See id.* at 966-67,  
 24 975.<sup>6</sup> Accordingly, *Blake* does not support the argument that the Facebook Warrant should be  
 25 upheld under the good faith exception.

26  
 27 <sup>6</sup> In *Blake*, the Eleventh Circuit was nonetheless troubled by the extent of the *disclosure* that the warrant allowed (*id.*  
 28 at 974); however, it held that whether the warrant violated the Fourth Amendment was a close enough question that  
 officers could have relied on the warrant in good faith. *See id.* at 975.

1                   **D.       Suppression of the Facebook Evidence**

2                   Having concluded that categories 3, 4, 5, 6 [related to private message header  
3 information], and 8 are overbroad and not subject to the good faith exception, the Court must  
4 determine the appropriate remedy. As discussed below, its options are partial or total suppression  
5 of the evidence obtained from the Facebook Warrant.

6                   The Ninth Circuit has “endorsed a doctrine of severance, ‘which allows a court to strike  
7 from a warrant those portions that are invalid and preserve those portions that satisfy the Fourth  
8 Amendment.’” *SDI*, 568 F.3d at 707. The Ninth Circuit permits severance “when a warrant  
9 lacked particularity because of some unduly broad language in the warrant.” *Id.* The doctrine  
10 requires, however, that the portions to be severed be sufficiently specific and “separable from the  
11 rest of the warrant to allow severance.” *Spilotro*, 800 F.2d at 967. “Total suppression, on the other  
12 hand, is appropriate when a warrant is wholly lacking in particularity.” *Id.* Additionally, total  
13 suppression is appropriate “when the valid portion of the warrant is a relatively insignificant part  
14 of an otherwise invalid search.” *Kow*, 58 F.3d at 428 (“severance is not available when the valid  
15 portion of the warrant is ‘a relatively insignificant part’ of an otherwise invalid search.”).

16                  Here, the Court is inclined to hold that total suppression of the evidence obtained from the  
17 Facebook Warrant is appropriate, because the valid portion of the warrant is a relatively  
18 insignificant part of the overall warrant. The Facebook Warrant allowed officers to collect and  
19 seize the eight enumerated categories of information for both the Kizzy Chapo and George Turner  
20 Facebook accounts. Ex. 1. As the Court explained, there was no probable cause to search the  
21 George Turner account and, as to the Kizzy Chapo account, all the substantive categories of  
22 information were overbroad (3, 4, 5, 6 [related to private message header information], and 8). As  
23 such, the only valid categories in the Facebook Warrant allowed officers to obtain identity-related  
24 information for the Kizzy Chapo account (categories 1, 2, 6 [minus historical private message  
25 header information], and 7). In the context of the entire warrant, this is a “relatively insignificant  
26 part of an otherwise invalid search.” *See Kow*, 58 F.3d at 428 (“severance is not available when  
27 the valid portion of the warrant is ‘a relatively insignificant part’ of an otherwise invalid  
28 search.”).

1           However, even if the Court only partially suppressed the evidence obtained from the  
 2 invalid categories (3, 4, 5, 6 [related to private message header information], and 8), as explained  
 3 below, the effect on the Residential Warrant would be the same. Specifically, the Residential  
 4 Warrant would allow officers to search Turner’s home for forgery-related evidence.

5           **E.     Effect of Suppression on Residential Warrant**

6           As explained below, there appears to be conflicting Ninth Circuit caselaw on what to do  
 7 when illegally obtained evidence is included in a subsequently issued search warrant.

8           On the one hand, some cases suggest that the Court must (1) inquire whether the officers  
 9 would have sought the search warrant if they had not first obtained the illegal evidence and if so,  
 10 then (2) excise the illegally obtained information from the search warrant and determine if  
 11 probable cause still exists to issue the warrant. *See, e.g., United States v. Sitton*, 968 F.2d 947,  
 12 956 (9th Cir. 1992) *abrogated on other grounds* (“Because there is no evidence that the decision  
 13 to seek the second warrant was prompted by the first search, the second warrant is valid if,  
 14 excising the tainted statements, the untainted portions of the affidavit contain a sufficient showing  
 15 of probable cause.”); *United States v. Salas*, 879 F.2d 530, 537–38 (9th Cir. 1989) (“The ultimate  
 16 question, therefore, is whether the search pursuant to warrant was in fact a genuinely independent  
 17 source of the information and tangible evidence at issue here. This would not have been the case  
 18 if the agents’ decision to seek the warrant was prompted by what they had seen during the initial  
 19 entry, or if information obtained during that entry was presented to the magistrate *and affected his*  
 20 *decision to issue the warrant.*); *United States v. Holzman*, 871 F.2d 1496, 1513–14 (9th Cir.  
 21 1989), *abrogated on other grounds* (“evidence would not be admissible, ‘if the agents’ decision  
 22 to seek the warrant was prompted by what they had seen during the initial entry, or if information  
 23 obtained during that entry was presented to the Magistrate and affected his decision to issue the  
 24 warrant.””).

25           On the other hand, other cases suggest the courts should simply excise the illegally  
 26 obtained information from the search warrant and determine if probable cause still existed to  
 27 issue the warrant (without regard to whether officers would have sought the warrant absent the  
 28 illegally obtained information). *See, e.g., United States v. Bishop*, 264 F.3d 919, 924 (9th Cir.

1 2001) (“Once the district court determined that the search warrant included illegally obtained  
 2 information, it properly purged the affidavit of the offending facts and examined whether the  
 3 remaining facts still afforded a substantial basis for concluding that the search warrant was  
 4 supported by probable cause.”); *United States v. Reed*, 15 F.3d 928, 933 (9th Cir. 1994) (“The  
 5 mere inclusion of tainted evidence in an affidavit does not, by itself, taint the warrant or the  
 6 evidence seized pursuant to the warrant . . . Rather, ‘[a] reviewing court should excise the tainted  
 7 evidence and determine whether the remaining untainted evidence would provide a neutral  
 8 magistrate with probable cause to issue a warrant.”’).

9 Here, even applying the less onerous line of cases, and after the Court excises the illegally  
 10 obtained information from the Residential Warrant, some information would remain related to  
 11 narcotics, firearms, and forgery (that was obtained independent of the Facebook Warrant). As  
 12 discussed below, the Court concludes that after excising the illegally obtained information, there  
 13 would be probable cause to search Turner’s home for forgery-related evidence but there would  
 14 not be probable cause to search for firearm-related evidence. The Court further concludes that the  
 15 government has not carried its burden to show that the good faith exception applies or that  
 16 officers would have inevitably discovered the firearm and ammunition. Accordingly, the firearm  
 17 and ammunition must be suppressed.<sup>7</sup>

18 **i. Forgery-Related Evidence**

19 The Court finds that the affidavit filed in support of the Residential Warrant established  
 20 probable cause to search for, at a minimum, electronic devices containing evidence of forgery-  
 21 related crimes (even after the illegally obtained information is excised from the affidavit). After  
 22 the illegally obtained information is excised from the Residential Warrant, the Warrant still  
 23 contains information from the July 6, 2020 post (used to obtain the Facebook Warrant) related to  
 24

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25 <sup>7</sup> The Court does not believe that the issuing-judge had a substantial basis for concluding that the affidavit established  
 26 probable cause to search for narcotics-related evidence based on the information included in the Residential Warrant.  
 27 *See Flores*, 802 F.3d at 1043 (a reviewing court may “not find a search warrant invalid so long as the issuing judge  
 28 had a substantial basis for concluding that the supporting affidavit established probable cause.”). The affidavit simply  
 provided no facts to suggest Turner had narcotics-related evidence at his home (as opposed to a stash house or  
 elsewhere). *See* Ex. 2 at 002800-01. However, the Court need not decide this issue because the Court concludes that  
 the government has not carried its burden to show that it would have inevitably discovered the firearm and  
 ammunition (had it been properly searching for narcotics-related evidence).

1 selling fake licenses and identification cards, the video of a fake Pennsylvania driver's license, a  
2 list of states for which Turner allegedly makes fake identification cards, and two Facebook stories  
3 from October 2020 related to selling fake licenses. Ex. 2 at 002787-88, 002796-97. This evidence  
4 provides a fair probability that evidence of a forgery-related crime would be found on Turner's  
5 electronic devices, and it is reasonable to infer that Turner would have his electronic devices at  
6 home. *Luong*, 470 F.3d at 902 (providing probable cause standard); *United States v. Gourde*, 440  
7 F.3d 1065, 1071 (9th Cir. 2006) ("probable cause determination may be based in part  
8 on reasonable inferences"). Accordingly, the Court concludes that even after excising the illegally  
9 obtained information from the Residential Warrant, probable cause would still exist to search  
10 Turner's home for at least some forgery-related evidence.

11 **ii. Firearm-Related Evidence**

12 After the illegally obtained information is excised from the affidavit filed in support of the  
13 Residential Warrant, there is no probable cause to search Turner's home for firearms or  
14 ammunition. Probable cause to search Turner's home for a firearm was supported by three facts  
15 in the Residential Warrant: (1) on February 19, 2020, Turner posted a Facebook story that  
16 contained a picture of two firearms inside of a firearm store with text, including "Bae wyu (where  
17 you at) Im [sic] tired of buying guns off the street" (Ex. 2 at 002798); (2) on May 14, 2020,  
18 Turner was arrested for being a prohibited person in possession of a firearm (*id.* at 002797); and  
19 (3) on July 25, 2020, Turner privately messaged with someone on Facebook about needing a gun  
20 for his house and wanting to get one (*id.* at 002798-99). *See* ECF No. 46 at 20-21 (government's  
21 response brief). The private message was obtained from the Facebook Warrant (ECF No. 46 at 7,  
22 n.9) and, as discussed above, must be suppressed and excised from the Residential Warrant.  
23 Accordingly, the evidence that remains is the February 2020 picture of firearms inside a firearm  
24 store and a May 2020 arrest for being a prohibited person in possession of a firearm. These two  
25 facts do not establish a fair probability that Turner would have a firearm in his house when the  
26 Residential Warrant issued (in November 2020). *See* Ex. 2. The evidence is both thin and stale  
27 (and the arrest suggests that if Turner had a firearm, it would have been confiscated by police).  
28

## **F. Whether the Good Faith Exception Applies to the Residential Warrant**

The government argues that even if there was no probable cause to search Turner's home for a firearm, the good faith exception applies. ECF No. 46 at 21-22.

The Ninth Circuit has held, however, that “the good faith exception does not apply where a search warrant is issued on the basis of evidence obtained as the result of an illegal search.” *United States v. Wanless*, 882 F.2d 1459, 1466-67 (9th Cir. 1989) (“because the search warrant was issued in part on the basis of evidence obtained from an illegal search of the vehicles, the ‘good faith’ exception does not apply”); *see also Bishop*, 264 F.3d at 924, n.2 (“When the warrant was secured in part on the basis of unlawfully seized evidence, the good-faith defense does not apply.”).

Here, as discussed above, the Residential Warrant was obtained, in part, based on illegally obtained information from Facebook Warrant. Accordingly, the good faith exception does not apply to the Residential Warrant.

## **G. Whether the Inevitable Discovery Doctrine Applies to the Firearm and Ammunition**

The government's final argument is that even if everything was excised from the Residential Warrant except as it relates to the forgery-related crimes, the government still would have inevitably discovered the firearm. ECF No. 46 at 22-23. Turner argues that it is the government's burden to prove by a preponderance of the evidence that it would have inevitably discovered the firearm, and the government cannot meet its burden. ECF No. 47 at 8.

The inevitable discovery doctrine was first recognized by the Supreme Court in *Nix v. Williams*, 467 U.S. 431 (1984). The doctrine provides that if, ““by following routine procedures, the police would inevitably have uncovered the evidence,’ then the evidence will not be suppressed despite any constitutional violation.” *United States v. Young*, 573 F.3d 711, 721 (9th Cir. 2009); *see also United States v. Reilly*, 224 F.3d 986, 994 (9th Cir. 2000) (providing same rule). The government must make this showing by a preponderance of the evidence. *Reilly*, 224 F.3d at 994. The government can carry its burden by offering evidence that ““by following routine

1 procedures, the police would inevitably have uncovered the evidence.”” *United States v. Lopez-*  
 2 *Soto*, 205 F.3d 1101, 1107 (9th Cir. 2000).

3 Here, the government did not carry its burden to prove that the firearm and ammunition  
 4 would have been inevitably discovered if police were only searching for forgery-related evidence.  
 5 The government offered no evidence regarding where the firearm and ammunition were found or  
 6 that officers would have inevitably discovered either by following routine procedures. *See* ECF  
 7 No. 54 (transcript of evidentiary hearing); *Lopez-Soto*, 205 F.3d at 1107 (the government can carry  
 8 its burden to show inevitable discovery by proving that officers would have discovered the  
 9 evidence following routine procedures). No evidence was offered about routine searching  
 10 procedures, where officers would have looked for forgery-related evidence, or if anything would  
 11 have been different about the search had officers not been looking for firearms and/or narcotics-  
 12 related evidence. *See* ECF No. 54 (transcript of evidentiary hearing); *Lopez-Soto*, 205 F.3d at 1107  
 13 (reversing district court for finding inevitable discovery doctrine applied when the government  
 14 provided no evidence on what officer would have done absent the illegality); *United States v.*  
 15 *Ramirez-Sandoval*, 872 F.2d 1392, 1399-1400 (9th Cir. 1989) (government assumed that the  
 16 evidence would have been inevitably discovered but “no evidence to that effect was introduced in  
 17 the hearing” and accordingly, government failed to meet its burden). Accordingly, the government  
 18 failed to carry its burden to prove by a preponderance of the evidence that the firearm and  
 19 ammunition would have inevitably been discovered had officers only been searching for forgery-  
 20 related evidence.

21 **V. Conclusion**

22 **IT IS THEREFORE RECOMMENDED** that Defendant’s motion to suppress (ECF No.  
 23 42) be GRANTED.

24 **NOTICE**

25 This report and recommendation is submitted to the United States district judge assigned  
 26 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
 27 may file a written objection supported by points and authorities within fourteen days of being  
 28 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely

1 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,  
2 1157 (9th Cir. 1991).

3

4 DATED: December 7, 2021.

5

  
6 BRENDA WEKSLER  
7 UNITED STATES MAGISTRATE JUDGE

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